

SENATE BILL REPORT

SB 5220

As of January 16, 2023

Title: An act relating to reorganization of domestic mutual insurers.

Brief Description: Concerning reorganization of domestic mutual insurers.

Sponsors: Senators Frame, Stanford, Kuderer and Nobles.

Brief History:

Committee Activity: Business, Financial Services, Gaming & Trade: 1/17/23.

Brief Summary of Bill

- Provides a process for domestic mutual insurers to reorganize as a stock corporation pursuant to a plan approved by the Office of the Insurance Commissioner (OIC).
- Enables domestic mutual insurer to be wholly reinsured in, its assets transferred to, and its liabilities assumed by, another mutual or stock insurer under terms and conditions approved by the OIC.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Staff: Clinton McCarthy (786-7319)

Background: Insurance companies are often either mutual or stock insurance companies, depending on their structure. A stock insurer is a public or private company owned by shareholders, who have bought shares in the company that, in the case of a public company, trade on a stock exchange. A mutual insurance company is a corporation with no shareholders, owned by its members and operated in their interest.

Mutual insurers provide benefits to their direct policyholders, including voting rights and access to dividends. These rights derive from the insurance contract; the corporation's

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bylaws, charter, or articles of incorporation; state laws; and case law. A stock insurance company is a corporation owned by its stockholders with the objective to make a profit for the stockholders. Stock insurance companies have the ability to raise capital by selling additional shares of the company.

Washington law does not provide for the creation of mutual insurance holding companies. Nationally, 34 states provide statutory authority to create mutual insurance holding companies. In these states, a mutual insurance company can convert to a mutual insurance holding company structure by electing to do so under the applicable insurance statutes, and obtaining the necessary approvals of members, board of directors, and insurance regulators. Under the mutual insurance holding company structure, a parent mutual holding company is created, and the mutual insurance company is converted to a stock insurance company, which is a subsidiary of the mutual holding company. The policyholders of the stock insurance company continue as members of the mutual holding company.

Summary of Bill: A domestic mutual insurer may reorganize as a stock corporation pursuant to a plan approved by the Office of the Insurance Commissioner (OIC). A domestic mutual insurer may be wholly reinsured in, its assets transferred to, and its liabilities assumed by, another mutual or stock insurer under terms and conditions approved by the OIC.

A domestic mutual insurer may engage in a conversion as part of a reorganization as a mutual holding company only if its board passes a resolution that the reorganization is fair and equitable to the policyholders and adopts a plan that meets requirements. After the board adopts a plan, and before approval by eligible members, the converting mutual insurer must file the plan; the meeting notice at which the eligible members vote on the plan; the form of any proxies to be solicited from the eligible members; information required by the converting mutual insurer's bylaws; and other information or documentation required by the OIC.

Reorganization Plan. The plan for reorganization must include the following:

- the reason for the reorganization;
- a description of how the plan will be carried out, any transaction included within the plan, and a description of any mutual holding company, intermediate stock holding company, or other corporation to be organized;
- a description of all significant terms of the reorganization;
- new or revised intercompany agreements;
- a description of the overall effect of the plan on policies issued by the converting mutual insurer, which demonstrates that policyholder interests are preserved and protected and the plan is fair and equitable for policyholders;
- the record date for determining whether a member of the converting mutual insurer is an eligible member;
- either the proposed effective date of the reorganization or the manner in which the proposed date will be established;

- the proposed amendments to or restatement of the articles of incorporation and bylaws of the converting mutual insurer, and the proposed articles of incorporation and bylaws of any mutual holding company, intermediate stock holding company, or other corporation established;
- a description of any plans for the initial sale of voting stock to third parties by the converted stock insurer or any intermediate stock holding company, or a statement that there are no plans for the sale of voting stock;
- the intention that a commissioner or officer of the converting stock mutual insurer, mutual holding company, intermediate stock holding company, or other corporation organized has three years following the effective date of the reorganization to purchase or acquire shares of capital stock or other securities; and
- a provision that all policies in force as of the effective date of the reorganization will remain in force, and any member voting rights provided for under the policies or under the mutual insurers statutes are extinguished.

A plan must also determine the amount of, and make provisions to pay members, reasonable compensation for their equities as owners.

Office of the Insurance Commissioner Duties and Plan Review. The OIC must approve or disapprove a plan within 60 days after receipt of the plan or after a hearing on the plan, whichever is later. A board may amend or withdraw a plan at any time before the OIC approves it. The OIC must review submitted plans and approve plans if all the following are found:

- applicable provisions have been fully met;
- policyholder rights are protected;
- the plan is fair and equitable to the members and does not prejudice member interests;
- the converted stock insurer has capital or surplus, or any combination thereof, that is required and is able to satisfy the requirements for transacting its business;
- policyholders' security and the services rendered are not significantly reduced;
- the financial condition of the mutual holding company or any subsidiary does not jeopardize the financial stability of the converted stock insurer;
- the financial condition of the converting mutual insurer is not jeopardized by the reorganization, and the reorganization does not jeopardize the financial stability of the mutual holding company or any subsidiary; and
- the competence, experience, and integrity of those persons who control the operations of the converted stock insurer are not contrary to the policyholders' interests and of the public.

The OIC may retain qualified experts who are not staff to assist in reviewing the plan at the expense of the converting mutual insurer. The OIC may hold a hearing to receive comments on whether a plan should be approved and on any matter relating to the reorganization. The hearing must be held within 60 days after receiving the plan.

The approval procedure for a plan must be the same as that for a merger or consolidation

under law. If a plan contains a provision that allows for the acquisition or merger of other insurance companies, the OIC must apply the standards for scrutinizing mergers and acquisitions provided under law, and any plan that fails to meet these standards must not be approved.

An OIC-approved plan must be carried out within one year after the approval date or it expires, unless the OIC approves an extension.

Plan Approval by the Mutual Insurer's Members. After the OIC approves a plan, the eligible members of the converting mutual insurer must approve the plan with a two-thirds vote. Approval by eligible members is subject to the following:

- all eligible members must be given notice of the plan and their opportunity to vote on the plan, along with a copy or summary of the plan;
- the notice must be mailed to the last known address of each eligible member within 45 days after the OIC approves the plan;
- the meeting in which the vote will occur must be set for at least 30 days after the meeting notice was mailed; and
- the vote required for approval must be conducted in accordance with the converting mutual insurer's bylaws, except that:
 1. only eligible members may vote on the plan;
 2. an eligible member may vote in person or by proxy at the meeting at which the plan is voted on; and
 3. the plan is approved by the eligible members with a two-thirds vote, unless the bylaws require a greater number.

The converting mutual insurer must file with the OIC a certification that the plan was adopted by eligible members.

Reorganization. On the effective date of a plan, the plan must be carried out and the following must occur:

- the converting mutual insurer becomes a converted stock insurer, and the amended or restated articles of incorporation and bylaws of the converting mutual insurer must be filed and become effective;
- the OIC must amend the certificate of authority of any converting mutual insurer;
- all membership interests and rights in surplus of the converting mutual insurer are extinguished, and the members of the converting mutual insurer become members of the mutual holding company;
- any owner of one or more insurance policies, other than a policy of reinsurance, issued by the converted stock insurer after the effective date of the conversion and, if permitted under the articles of incorporation or bylaws of the mutual holding company, any holder of one or more insurance policies, other than a policy of reinsurance, issued by any other insurer that is a direct or indirect subsidiary or affiliate of the mutual holding company after the effective date of the reorganization becomes a member of the mutual holding company;

- the mutual holding company or the intermediate stock holding company acquires and retains all shares of the voting stock of the converted stock insurer;
- the mutual holding company acquires and retains all shares of the voting stock of any intermediate stock holding company;
- the converted stock insurer continues the corporate existence of the converting mutual insurer, and the conversion does not annul, modify, or change any existing license, other authority, or any of the existing civil actions, rights, contracts, or liabilities of the converting mutual insurer;
- the converted stock insurer retains all property, debts, choses in action, and every other interest belonging to the converting mutual insurer before the conversion without further action needed; and
- the converted stock insurer may exercise all rights and powers conferred and must perform all duties imposed, retain the rights and contracts of the converting mutual insurer, and be subject to all obligations and liabilities of the converting mutual insurer, subject to the plan terms.

All information and documents obtained or disclosed to the OIC or any other person in the course of preparing, filing, and processing an application to reorganize, other than those distributed to policyholders or filed and submitted as evidence in a public hearing pursuant to the Administrative Procedure Act, are confidential, not subject to subpoena, and must not be made public except to insurance departments of other states, with the prior written consent of the insurer to which the information and documents pertain.

Any intermediate stock holding company created at the time of reorganization to hold the stock of the converting mutual insurer must be incorporated and may engage in any business or activity permitted under law.

Unless otherwise specified in the plan, the directors and officers of the converting mutual insurer must serve as directors and officers of the mutual holding company, any intermediate stock holding company, and the converted stock insurer until new directors and officers are elected.

Debt Securities and Voting Stock. The converted stock insurer and any intermediate stock holding companies may issue to third parties debt securities, stock other than voting stock, and voting stock if all of the following apply:

- no shares of stock representing a majority of the voting power are issued to third parties; and
- a majority of the voting stock of the converted stock insurer is at all times owned by the mutual holding company or by the intermediate stock holding company, a majority of whose voting stock is held by the mutual holding company, and such majority interest in the converted stock insurer and any intermediate stock holding company is not conveyed, transferred, assigned, pledged, subjected to a security interest or lien, placed in a voting trust, encumbered, or otherwise hypothecated or alienated by the mutual holding company or by the intermediate stock holding

company.

Any conveyance, transfer, assignment, pledge, security interest, lien, placement in a voting trust, encumbrance, or hypothecation or alienation of, in or on a majority of the voting shares of the converted stock insurer or the intermediate stock holding company is a violation and shares are void in inverse chronological order.

Mutual Holding Companies. A mutual holding company is not an insurer, but certain provisions apply as if the mutual holding company were a domestic mutual insurer. A mutual holding company may not dissolve or liquidate without approval by the OIC or unless required by judicial order. The OIC retains jurisdiction over a mutual holding company, any intermediate stock holding company, and any subsidiary of an intermediate stock holding company.

Mutual holding company members have the rights and obligations set forth by law and in the company's articles of incorporation and bylaws. A member of a mutual holding company may not transfer membership or any right. A member of a mutual holding company is not personally liable for the acts, debts, liabilities, or obligations of the mutual holding company merely by reason of being a member. An assessment of any kind may not be imposed on a member of a mutual holding company, and an insurance policy premium is not considered an assessment. Membership interest does not constitute a security. Each member is entitled to one vote regardless of the number of policies or amount of insurance held. Member meetings are to be governed in the same manner as domestic mutual insurers.

The articles of incorporation of a mutual holding company must contain the following provisions:

- the name of the mutual holding company;
- a provision specifying the the mutual holding company is not authorized to issue capital stock; and
- a provision setting forth any member rights on dissolution or liquidation.

A mutual holding company is automatically a party to any rehabilitation or liquidation proceeding involving the converted stock insurer that is a direct or indirect subsidiary of the mutual holding company. In such a proceeding, the mutual holding company's assets count as assets of the estate of the converted stock insurer for the purpose of satisfying policyholder claims of the converted stock insurer.

Concurrent Reorganization. The concurrent reorganization of a domestic mutual insurer with one or more mutual insurers, domestic or foreign, into a single mutual holding company, whether domestic or foreign, may be accomplished by a joint application and a joint plan. The OIC may determine that such other procedures are unnecessary to avoid duplicative costs and efforts in satisfying the requirements and effectuating the reorganization.

Foreign Mutual Insurer. A foreign mutual insurer may reorganize by merging its policyholders' membership interests into an existing domestic mutual holding company in accordance with laws applicable to foreign mutual insurers. The reorganization must continue the corporate existence of the converting mutual insurer as a foreign stock insurance company subsidiary of the existing domestic mutual holding company or as a foreign stock insurance company subsidiary of an intermediate stock holding company. The reorganizing foreign mutual insurer may remain a foreign insurer after the restructuring and may be admitted to do business in Washington if it meets the applicable requirements. A foreign mutual insurer that is a party to the reorganization may at the same time redomesticate to Washington by complying with the applicable requirements of Washington and the foreign mutual insurer's state of domicile.

Appropriation: None.

Fiscal Note: Requested on January 13, 2023.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.